No. 20-6143 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

MR. SAUL MANGUAL-CORCHADO
PETITIONER

v.

THE UNITED STATES
RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI
TO
THE FIRST CIRCUIT COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

MR SAUL MANGUAL - CORCHADO
U.S. M. # 11072 - 069
FCC - USP TERRE HAUTE
POST OFFICE BOX - 0033
TERRE HAUTE, IN. 47808

QUESTIONS PRESENTED

LISTED PARTIES AND RELATED CASES

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment in the subject of this petition is as follows:

Case is Under ERNESTO CIRILO-MUNOZ v. UNITED STATES
525 U.S. 942; 142 L.Ed 2d 300; 119 S.Ct. 363
For The Petitioner:

MR. SAUL MANGUAL-CORCHADO:
139 F.3d 34, 49 (1st Cir. P.R. Mar. 18, 1998)

- Attorney of Record:

  MR. JORGE L. ARROYO-ALELANDRO ESQ.

- THE UNITED STATES GOVERNMENT:

  MR. EDWIN O. VAZQUEZ: DEPUTY CHIEF CRIMINAL DIVISION
  MR. GUILLERMO GIL ESQ. UNITED STATES ATTORNEY
  MS. JEANETTE MERCADO-RIOS ESQ. ASSIST. UNITED STATES ATTORNEY

- UNITED STATES DISTRICT COURT JUDGE:

  THE HONORABLE: HECTOR M. LAFFITTE: USDC JUDGE

- UNITED STATES APPEALS COURT JUDGE(S);

  THE HONORABLE: CYR, LYNCH & MC AULIFFE USCA JUSTICES

T A B L E O F C O N T E N T S

I N D E X T O A P P E N D I C I E S

I N T H E

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

The petitioner respectfully prays before this Said Court: that a writ of certiorari issue to review the judgment below.

O P I N I O N S B E L O W

[X] For cases from the **federal courts:**

The opinion of the United States district court at Appendix 139 F.3d 34, 49 (1st, Cir. 3/18/ 98)

[X] is unpublished

[X] The opinion of the United States court of appeals at Appendix 2005 U.S. App. Lexis 6343 (4/15/05),&

[X] The opinion of the United States court of appeals at Appendix 2007 U.S. App. Lexis 23050 (10/2/07),&

[X] The opinion of the United States court of appeals at Appendeix 2009 U.S. App. Lexis 19999 (9/4/09)

[X] are unpublished

[X] The opinion of the United States Supreme Court at Appendix 119 S. Ct. 363; U.S. Lexis 6666 (2001)

J U R I S D I C T I O N

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was April 22, 2020

[X] A timely petition for rehearing was denied by the United States Court of Appeals on that of the following date: April 22, 2020, and a copy of the order denying rehearing appears at the Appendix of: USCA First Cir. 19-2211

The jurisdiction of this Court is invoked under 28 U.S.C. § 1251(1).

TABLE OF AUTHORITIES CITED

CODES & STATUTES:

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

[R]ules that come from the federal Constitution or a states constitution --- when these enacted constitutional rights and rules conflict with a law or laws the rule prevails.....

- [A] vague law is no law at all -

18 U.S.C. § 16(b)
18 U.S.C. § 924(c)

18 U.S.C. § 2
18 U.S.C. §848(e)(1)(B)
18 U.S.C. § 1951
18 U.S.C. § 2119(c)

The United States Constitution

Amendment V (Due Process Clause)
Amendment VI (Assistance of Counsel)(Judge Found Factors)
Amendment VIII (Cruel and Unusual Punishment)
Amendment XIV (Due Process Clause) (Equal Protection Clause)

Federal Statutes

The Elements Clause
The Residual Clause
The Categorical Approach
The Vagueness Doctrine
The Rule of Lenity
Seperation of Powers
The Comprehensive Crime Control Act of 1984
Constitutional Avoidance
Substantial Risk
Grave Risk
Unreasonable Risk —> Standard
Qualitative Risk

STATEMENT OF THE CASE

[T]his matter comes before this Honorable Said Court on the defendant's petition Pursuant To SCOTUS Rules of 10-14.

[T]his petition is provided on the issue for this Said Court to properly decide if:

1- [W]hether the petitioner's claim under 18 U.S.C. § 924(c) as now been proscibed under the changes of the law of: Johnson I & II, Welch, Davis, & Rehaif as has been addressed by this Honorable Said Court.

2. [W]hether the aid & abet, as well as the conspiracy to commit the crime is actionable under 18 U.S.C. §§ 2 and 1951, where the defendant's actus reus is at a minimal risk, and if so whether the defendant can or has established such a claim.

B A C K G R O U N D

[O]n or about; November 1994; the co-defendants of: ant, [MANGUAL-CORCHADO], also known as [CORCHADO]; being that of; Lugo, Silva, Ramirez, Mejias, Marales and Cirilo (and others) were at 'El Ideal' drug point.

[Lu]go had accused Mejias of being an informant for the police department, while at 'El Ideal' Lugo retrieved a revolver --- while Silva and Ramirez waited with Mejias at 'El Ideal'.

[W]hile returning back to 'El Ideal', Lugo encountered Mangual-Corchado, Cirilo and Moralez; during their conversations, the idea and order to beat up Mejias was requested, to take place, but Mangual-Corchado, Moralez and Cirilo declined, to beat up Mejias, yet agreed to take his vehicle. Later dur(ing) the discussion; Papilin arrived and told Lugo that the need to kill Mejias was required, 'that if not he would return back as a revenge'. Therein, Lugo shot Mejias in the head, as well as the back and abdominal area. After, Lugo shot Mejias, Ramirez proceeded to shot Mejias again two more times, again in the haed and back. After realizing that Mejias was dead, Both Lugo and Ramirez, with Cirilo in the car to Mejias' car a Suzuki, and drove it to the quarry to drop the body and car.

[A]fter all was done the men took from Mejaias, $240.00 dollars from his pocket and split the money amongst them.

[L]ater all men were arrested and charged with multiple crimes being:

21 U.S.C § 848(e)(1)(B)	- Conspire To Kill An Undercover Policeman / And Killing A Police Office In During A Drug Offense
18 U.S.C. § 2	-- Aiding and Abetting
18 U.S.C. § 2119(3)	- Carjacking; and
18 U.S.C. § 924(c)	- Possessing a Firearm To Commit Carjacking During The Commission of Carjacking as a 'crime of violence'
18 U.S.C. § 1951	- Hobbs Act Robbery / Interference With Commerce In The Commission of a Felony 'Crime of Violence'

[A]s listed in the documents:

[Ul]timately: three of the defendnats were convicted and sentenced to LIFE in federal prison as for the others, they're not reported and 'LUGO' was eventually sentenced to Twenty-seven (27) years later reduced to Twenty (20) years of incarceration in federal prison.

[I]n September of 1998; Ernesto Cirilo-Munoz [CIRILO]; was not convicted of the carjacking or firearms, yet found to have participated in the murder.

As for:

Saul Mangual-Corchado, The Defendant, [CORCHADO] = LIFE

Luis Antonio-Ramirez-Ynoa, [RAMIREZ]; = LIFE

Daniel Silva [SILVA] = (?)

Yeto Morales [MORALES] = (?)

Jose Lugo-Snachez [LUGO] = 20 years for cooperation with the Government.

Ivan Mejias-Hernandez [MEJIAS] = VICTIM

[S]ince the defendant's incarceration, several filings have been made over the twenty plus years of incarceration, and with the prior filing of Johnson v. United States; 135 S.Ct. 2551 (2015); along with, Welch, Mathis and Dimaya; he has now have the effects of Davis/Glover v United States; 139 S.Ct. 1338 (2019); to now come forward and address to this Said Court, the standings that he come now present. Also see: Rehaif v. United States; 139 S.Ct. 2191 (2019); Haymond v. United States; 139 S. Ct. 2369 (2019) and many others as they are now to be presented.

[T]he Defendant, [CORCHADO]; feels that he can and will now make a proper 'PRIMA FACIE' showing towards his Writ of Certiorari with this Said Court.

Sessions v. Dimaya; 584 U.S. __, the Court reversed its own course and held that § 924(c)(3)(B), as unconstitutional. It than held that Davis's and his co-defendant's (Glover's) convictions on the § 924(c) count charging as Hobbs Act Robbery --- as a true predicate offense as a 'crime of violence' --- could be sustained under that of the elements clause, but that the other counts - which in fact charged conspiracy as a predicate 'crime of violence' could not be upheld - (be)cause it depends on that of the residual clause.

[O]riginally; the Fifth Circuit concluded that Davis and Glover's conspiracy offenses did not fit within that of the elements prong of § 924(c)(3). So the question was in fact whether Davis and Glover were covered by the second prong. The second prong of § 924(c)(3) is the sunstantial-risk prong. The prong covers cases beyond tose covered by the fisrt prong, the elements prong. Congress sensibly wanted to cover defendants who committed crimes that are not necessarily violent by definition under the elements prong, but who committed crimes with firearms in a way that created a substantial risk that violent force would be used. To that end, the substantial-risk prong, properly read, focuses not on the defendant's conduct during that crime created a substantial risk that physical force may be used, then the defendant may be guilty of a § 924(c) offense. In that instance the jury makes the finding: Did the defendnat's conduct dur-(ing) the underlying crime create a substantial risk that a violent force would be used. In other words, as relevant in this case here, the defendant can fall within the scope of § 924(c) by either:

1. Because of the elements of the underlying crime, or
2. Because of the defendant's conduct in committing the underlying crime. That either the judge finds that an element of the underlying crime entails the use of a physical force or, (2) the jury finds that the defendant's actual conduct involved a substantial risk that physical force may be used.

[T]he basic question in this case is whether that of the substantial-rsik prong of § 924(c)(3)'s definiton of 'crime

of violence' could be sustained under the elements clause, but that the other count - which charged conspiracy as a predicate 'crime of violence' cound not be upheld because it depended on the residual clause.

[H]olding:

[Sec]tion 924(c)(3)(B) is unconstitutionally vague, (Pp. 4-25).

(a)- In our constitutional order,"a vague law is no law at all." The vagueness doctrine rests on the twin constitutional pillars of due process and seperation of powers. The Supreme Court had applied the doctrine in two cases involv-(ing) statutes taht bear more than a passing resemblance to § 924(c)(3)(B)'s residual clause - Johnson v. United States; 576 U.S. ___, which addressed the residual clause of the Arm-(ed) Career Criminal Act [ACCA], and Sessions v. Dimaya, whom addressed the residual clause of 18 U.S.C. § 16. The residual clause in each case required judges to use a 'categoriacl approach' to determine whether an offense qualified as a violent felony or 'crime of violence'. The Supreme Court read the language (the nearly identical language) of § 16(b) to mandate a categorical approach. See Leocal v. Ashcroft; 543 U.S. 1, 7. And what is true of § 16(b) seems at least as true of § 924(c)(3)(B). The Gov't claims that the 'generic' meaning in connection with the 'elements clause', but a 'specific act' in connection with the 'residual clause' , but nothing in § 924(c)(3)(B) rebuts the presumption that the single term "offense" bears a consistent meaning. This reading is reinforced by the language of the 'residual clause' itself, which speaks of an offense - that "by its nature" involves a certain type of risk. Pp. 9-12.

[T]he categorical reading is also reinforced by § 924(c)(3)(B)'s role in the broader context of the federal criminal code. Dozens of federal statutes use the phrase 'crime of violence' to refer to presently charged conduct. Some cross-reference § 924(c)(3)'s definition, while others are governed by the virtually identical definition in§ 16. The choice appears completely randum. To hold that § 16(b) requires the 'categorical approach'

vagueness challenge to Section 924(c)'s 'residual clause' because federal carjacking under § 2119 under of the un-heard cases did in fact qualified as a 'crime of violence' under § 924(c)'s 'force clause' as it was than written and announced. The Appellant/Petitioner's issued § 2255 motion raised that as well as additional claims. He files a most timely notice of appeal.

ARGUMENT AND AUTHORITY

I. STANDARD FOR ISSUING A WRIT OF CERTIORARI

Section 2255 petitioners must obtain a WOC before appealing the denial of a motion to vacate, set aside, or correct a sentence. 28 U.S.C. § 2553(c)(1). A WOC should issue if the petitioner has made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2553 (C)(2). A petitioner satisfies this standard by either "showing that a reasonable jurist could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner" or "that the issue presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel: 529 U.S. 473, 478 (2003) (citation and internal quotation marks omitted).

This inquiry; the, Supreme Court rencently reinterated, "is not coextensive with the merits analysis." Buck v. Davis; 137 S. Ct. 759, 773 (2017). The threshold debatability question "should be decided without full consideration of the factual or legal bases adduced in support of the claims." Id. (citation omitted). Consistent with this expression, a court of appeals "should not decline the application for a WOC merely because it believes that the appellant will not demonstrate entitlement to relief." Miller-El v. Cockrell; 537 U.S. 322, 337 (2003). "Indeed, a claim can be debatable even though every jurist of reason might agree,

after the WOC has been granted and the case has received full consideration, that petitioner will not prevail." Id. (emphasis added). Accordingly, a petitioner need not show they will prevail on the merits in order to make the required "substantial showing."

Under the "debatable among reasonable jurist" standard, a petition presenting a question of first impression ordinarily merits issuance of a WOC. See: United States v. Espinosza-Saenz; 235 F.3d 501, 502 (10th Cir. 2000) ("Because [the issue on appeal] presents a question of first impression... [the court] concludes that the issue merits further judicial consideration ...."). In fact, this Court generally does not grant Writs of Certiorari's on noval issues. See, e.g. Ramos-Martinez v. United States; 638 F.3d 315, 318 (1st Cir. 2011) (granting WOC on, inter alia, the question whether the limitations period for habeas petitions under 28 U.S.C § 2255(f) is subject to equitable tolling); Sepulveda v. United States; 330 F.3d 55, 57 (1st Cir. 2003)(granting WOC on. inter alia, the question whether Apprendi v. New Jersey; 530 U.S. 466 (2000) applies retroactively to cases on collateral review). The fact that a circuit split exist also satifies the satndard for obtaining a WOC, See: Lambright v. Stewart; 220 F.rd 1022, 1028-29 (9th Cir. 2000).

II. THE COURT SHOULD ISSUE A WOC AND ADDRESSS WHETHER THE FEDERAL CARJACKING OFFENSE DOES CONSTITUTE A "CRIME OF VIOLENCE" WITHIN THE MEANING OF 18 U.S.C. § 924(c).

The Defendant's contention that carjacking can be committed non-violently via intimidation, and would not implicate Section 924(c)(3)(A)'s 'force clause', satisfies the standard for issuance of a WOC. But, as previously mentioned, this Court recently held that carjacking categorically satisfies Section 924(c)'s 'force clause'. See: Cruz-

Rivera; 904 F.3d at 66. That issue, however, could likely

Likewise, the Defendant submits that reasonable jurist can and do debate the question whether Johnson II invalidates Section 924 (c)(3)B)'s 'residual clause', as evidence by emerging circuit split on the issue. See infra Section II. F. But see: United States v. Douglas; No. 18-1129, 2018 WL 4941132, at *1 (1st Cir. Oct. 12, 2018) ("[W]e conclude that § 924(c)(3)(B) is not ... void-for-vagueness."). The Defendant thus submits that the specter of a conviction that is violative of his due process rights, coupled with a lack of guidance from the Supreme Court on whether carjacking falls within the scope of § 924 (c)'s 'force clause', and whether Section 924(c) is void-for-vaugeness, satisfies the "substantial showing" standard.

A. SECTION 924(c)'s "CRIME OF VIOLENCE" DEFINITION.

Section 924(c) of Title 18, United States Code, sets forth the offense of using or carrying a firearm during and in relation to a "crime of violence", or possessing a firearm in furtherance of a "crime of violence." Section 924(c) defines "crime of violence" as a felony that either;

> (A) has as an elemnent the use, attempted use, or threathend use of physical force against the person or property of another; or
>
> (B) **that by its nature, involves a substantial risk that physical force against the person or property of another may be used, in the course of committing the offense.**

18 U.S.C § 924(c)(3) (emphasis added). Section (A) is known as the 'force clause', while the bolded Section (B) is referred to as the 'residual clause." See: United States v. Taylor; 848 F.3d 476, 491 (1st Cir. 2017) and also Davis v. United States; 139 S. Ct. 2319 (2019).

[T]hus, in order to qualify as a 'crime of violence' under Section 924's (c)(3)(A), the offense as issue must necessarily include as an element "the use, attempted use, or threatend use of physical force against the person or property of another." 18 U.S.C. § 924(c)(3)(A) (emphasis added).

"[P]hysical force", (id.), is a term of art that is deffined as "violent," "strong," and/or "great" force "capable of causing physical pain or injury to another person." Johnson v. United States; 559 U.S. 133, 144 (2010) (Johnson I). This Court in United States v. Wilndley added a gloss to Johnson I's definition of 'physical force' by holding that the punitive "crime of violence" additionally must require the intentional - not neglegent or reckless - application of force; 864 F.3d 36, 38 (1st Cir. 2017)(per curiam) (citing Bennet v. United States; 868 F.3d 1, 22-23 (1st Cir. 2017)). This volitional requirement extends to threats of force.

Courts apply the 'categorical' approach to determine whether a particular offense meets Section 924(c)'s definition of 'crime of violence.' See: United States v. Taylor; 495 U.S. 575, 600 (1990); accord Descamps v. United States; 133 S. Ct. 2276 (2013). That approach focuses exclusively on the elements of the offense, "even.. ...if th[e] facts show [that the defendant] acted violently." See: United States v. Serrano-Mercado; 784 F.3d 838, 842 (1st Cir. 2015) (citation omitted). Relavantly, the categorical approach looks to "the least amount of force required by the [offense]." United States v. Starks; 861 F.3d 306, 324 (1st Cir. 2017); accord Moncrieffe v. Holder; 133 S. Ct. 1678, 1684 (2013) (quoting Johnson I 599 U.S. 137)).

[F]or this reason, where an indivisible offense captures conduct that falls below Johnson I's violent-force threshold, the offense will not qualify as a 'crime of violence', See: e.g. United States v. Mulkern; 854 F.3d 87, 93-94 (1st Cir. 2017) (holding Maine robbery reaches "any" level of force and thus is not a violent felony).

B. THE FEDERAL CARJACKING STATUTE.

[I]n the underlying criminal case, the Defendant was convicted of violating 18 U.S.C. § 924(c) in connection with the offense of federal carjacking, as defined in 18 U.S.C. § 2119(1), along with Hobbs Act robbery: 18 U.S.C. § 1951(a).

[Un]der Section 2119 - defines carjacking as follows:

> [W]hoever, with the intent to cause death, or serious bodily harm takes a motor vehicle that has been transported, shipped, or recieved in intersate or foreign commerce from the person, or presence of another by force and violence, or by intimidation, or attempts to do so shall
>
> (1) be fined under this title or imprisoned not more than 15 years or both,
>
> (2) if serious bodily imjury .... results be fined under this title or imprisoned not more than 25 years, or both; and
>
> (3) if death results, be fined under this title or imprisoned for any number of years up to life, or both.

18 U.S.C. § 2119. Each of Section 2119's subsections set forth a "seperate offense [ ] by the specification of distinct elements.." See: Jones v. United States; 526 U.S. 227, 252 (1990).

[T]o prove carjacking, the government must establish the following elements beyond a reasonable doubt: "(1) taking or attempted taking from the person or presence of another; (2) a motor vehicle that has been transported, shipped, or re-- ceived in interstate or foreign commerce; (3) through the use of force, violence, or intimidation; (4) with the intent to cause death or serious bodily harm. "United States v. Garcia-Alverz; 541 F.3d 8, 16 (1st Cir. 2008).

"Intimidation" is "to make timid or fearful; to compel or deter by as if by threats[2]." Bodily harm or injury feared "means a cut, abrasion, bruise, burn, disfigurement, physical pain, or illness, or impairment of the function of a bodily member, organ or mental faculty; or another other injury to the body, no matter how temporary." [3] The Defendant submits that the offense "contemplates simply that the defendant have subjected the victim to minimal levels of fear or 'intimidation." United States v. Burns; 160 F.3d 82, 85 (1st Cir. 1998).

[P]er this Court's case law and Pattern Jury Instruction, of Section 2119 does not require the jury to agree on the method by which the defendant gained control of the motor vehicle - i.e. if

[2] See Intimidate, Merriam-Webster Dictionary, available at https:// www.merriam-webster.com/dictionary/intimidation

[3] Instruction 4. 18.2113(a), (d), available a at https:// www.med.uscourts.gov/pdf/crpjilinks.pdf.

"by force and violence or by intimidation." See: United States v. Castro-Davis; 612 F.3d 53, 61 (1st Cir. 2010)(referring to; "by force and violence or by intimidation" as Section 2119's; "second element"). This charcteristic suggests carjacking's [] "by force and violence or by intimidation" element is indivisible, given a factfinder need not select a statutory alternative to the "exclusion of all others." Mathis v. United States; 136 S. Ct. 2243, 2257 (2016); cf. United States v. Faust; 853 F.3d 39, 51 (2017) (finding Massachusetts offense of resisting arrest indivisible based partly on model jury instructions, which listed stautory alternatives "under a single element").

C. REASONABLE JURIST ARE DIVIDED ON WHETHER THE ELEMENT OF "BY FORCE AND VIOLENCE AND INTIMIDATION" DOES, MEETS; "JOHNSON I's" VIOLENT-FORCE THRESHOLD.

[F]ederal carjacking, like other federal robbery offenses, (see, e.g. 18 U.S.C. §§ 2111, 2113), contains an element requiring a taking achieved by "force and violence" or "intimidation." 18 U.S.C. § 2119. As the Supreme Court has noted, the statutory element of "by force and violence" or "intimidation" present in each of these offenses is analogous to robbery at common law, whichpunished takings effected "by means of force or putting in fear" or through similar language. See: Carter v. United States; 530 U.S. 255, 264 (2000) (noting that federal bank robbery, as set forth in 18 U.S.C. § 2113(a), "bear(s) a close resemblance to the common-law crime of robbery"). See: also United States v. Boucha; 236 F.3d 768, 776 (6th Cir. 2001) ("The federal carjack-(ing) statute tracks the language used in other federal robbery statutes.") United States v. Lilly; 512 F.2d 1259, 1261 (9th Cir.

1975) ("The [federal bank robbery statute] was accepted as the crime of robbery as known to the common-law.").

[I]n analyzing state robbery offenses, which are also derived from common-law robbery, an overwhelming number of federal appellate courts have concluded that these offenses do not qualify as 'crimes of violence'. See: e.g. Starks; 861 F.3d at 317 (analyzing Massachusetts Robbery, which punishes takings effected "by force and violence" and intimidation , or by assault and putting in fear," but "may involve no more force against the victim than a mere touching'; holding the offense is not a violent felony); United States v. Winston; 850 F.3d 677 (4th Cir. 2017) (Virginia common-law robbery, which criminalizes takings "by violence or intimidation," is not a crime of violence); United States [v. Gradner]; 823 F.3d 793 (4th Cir. 2016) (holding North Carolina common-law robbery, which punishes felonious takings "by means of violence and fear," is not a violent felony). Each of these cases construed the state robbery offenses as encompassing the use of de minimis force, thereby disqualifying them from meeting Johnson I's definition of 'crime of violence."

Despite their strikingly similar language and shared common-law ancestry, federal and state robbery offenses have received incongruous treatment by federal courts. In fact, every federal appellate court to tackel the issue to date has concluded that each federal crime of robbery constitutes a crime of violence, See: e.g. United States v. Ellison; 866 F.3d 32 (1st Cir. 2017) (Federal bank robbery defines 'crime of violence' within the meaning of the Guidelines); United States v. Evans; 848 F.3d 242 (4th Cir.), cert. denied., 137 S. Ct. 2553 (2017) (Federal carjacking

satisfies Section 924 (c)(3)(A)'s requirements); United States v. Jones; 854 F.3d 737, 740-41 (5th Cir. 2017)(same); United States v. Boman; 810 F.3d 534, 542-43 (8th Cir.), vacated and remanded, 137 S. Ct. 87 (2016) (The offense of robbery in federal property, as defined in 18 U.S.C. § 2111, qualifies as a violent-felony predicate under the ACCA's force clause). But see: United States v. O'Connor; No. 16-3300, WL 4872571, slip op. at * 8-9 (10th Cir. Oct. 30, 2017)(Hobbs Act robbery under 18 U.S.C § 1951 is not categorically a 'crime of violence' under the Guidelines).

[Sig]nificantly, none of these decisions acknowledged, let alone factored into their 'crime of violence' calculus, the common-law provenance of the federal robbery stautes. This oversight is significant because the holdings are in tension with other federal appellate court decisions in which state robbery offenses - which are also derived from the common law and contain an analogous elelment of "by force and violence" or "intimidation" - do not categorically qualify as a'crime of violence'. These dispatre rulings underscore that reasonable jurist can, and in fact do, come to diverging conclusions on the same legal issues. As such, this Court should grant WOC on whether federal carjacking satisfies the requirements of 18 U.S.C § 924(c)(3)(A).
See: Davis v. United States; 139 S.Ct. 2319 (2019)

D. REASONABLE JURIST COULD FIND DEBATABLE THE ISSUE WHETHER CARJACKING'S INTIMIDATION ELEMENT REQUIRES A VOLITIONAL THREAT OF VIOLENT FORCE.

[T]his Court has recently held that even though federal carjacking can be accomplished by intimidation, it additionally requires that the government prove that the defendant committed the

carjacking offense "with the intent to cause death or serious bodily harm." Cruz-Rivera; 904 F.3d at 66. Reasonable jurist could disagree on whether the offense remains outside the grasp of the force clause since carjacking does not necessarily require the intentional use, attempted use, or threatened use of "violent force." Circuit level cases interpreting "intimidation occurs when an ordinary person in the [victim's] position reason (ably) could infer a threat of bodily harm from the defendant's acts." United States v. Cornillie; 92 F.3d 1108, 1110 (11th Cir. 1996) (per curiam)(citations and internal quotation marks omitted).

"[W]hether or not the defendant actually intended the intimidation" is irrelevant. United States v. Woodrup; 86 F.3d 359, 364 (4th Cir. 1996)(emphasis added); United States v. Pickar; 616 F.3d 812, 825 (8th Cir. 2010)(same). Thus even assuming intimidation can be equated to the threatened use of physical force against the person of another, it still fails to qualify as a 'crime of violence' in light of the fact that the defendant need not intimidate the victim intentionally. See: In re: Smith; 829 F.3d 1276, 1293 (11th Cir. 2016) (Pryor, J. disenting)(recognizing, in the context of federal carjacking, that a defendant may intimidate a victim without intending to do so, which "raises a question regarding whether it is possible to commit the offense of carjack-(ing) without ever using, attempting to use, or threating physical force as described in the [force] clause")(citation ommitted); cf. Windley; 864 F.3d at 38 (offenses lacking an intentional mens rea requirement fall outside the scope of the force clasuse).

See: United States v. Davis; 139 S.Ct. 2319 (2019); also see United States v. Rehaif; 139 S. Ct. 1470 (2019); and United States v. Ledbetter et al; No. 17-3299 & 17-3309(2019)

Furthermore, as one dissenting judge noted in 2016.

> [I]t is possible to prove that a defendant had the intent to commit death or serious bodily harm without proving taht he used, attempted to use, or the threatened to use physical force against the victim. As the Supreme Court explained in Holloway, a defendant could still be found guilty of carjacking in a "case in which the driver surrendered or otherwise[] lost control over his car" without the defendant had ever used, attempting to use, or threatening to use physical force so long as the government could separately satisfy the intent element. The government could do so, for example, looking outside the defendant's charged conduct and at his prior bad acts.

In re Smith; 829 F.3d 1276, 1283 (11th Cir. 2016) (Pryor, J. dissenting). This passage validates the Defendant's theory that carjacking can be committed non-forcefully. And it shows that reasonable jurist can desagree on whether carjacking constitutes a 'crime of violence.'

E. REASONABLE JURIST RECOGNIZE THE DEBATABILITY, OF IF WHETHER CARJACKING SATISFIES THE FORCE CLAUSE

[I]n denying the Defendant's 2255 Motion, the lower court found that carjacking even if divisible, would still be a crime of violence through intimidation alone, since it has to be committed with the intent to cause death or serious bodily harm.

[I]t also found meritless, the Defendant's argument that the elements of aiding and abetting liability must be brought under the same analysis to determine whether it constitutes a crime of violence. The court than denied the appellant a certificate of appealability after concluding, without further discussing the COA standard, that he had not made a 'substantial showing of the denial of a constitutional right,' quoting 28 U.S.C. § 2255(c)(2). Reasonable jurist would beg to differ. Indeed,

perhaps in recognition that "crime of violence" issues remain in a state of flux post Johnson II, district courts outside our Circuit have denied petitions taht are substantively identical to the Defendant's while recognizing that "the question presented are adequate to proceed" on appeal. United States v. Newton; No. 94-CR-5036, 2017 WL 1105992, slip op. at *6 (E.D. Cal. Mar. 23 2017) (granting COA on whether (i)924(c)'s residual clause is unconstitutionally vague and (ii) carjacking resulting in serious bodily injury, 18 U.S.C. § 2119(2), constitutes a crime of violence); see: also United States v. Bates; No.99-CR-08, 2017 WL 2230335, slip op. at *4 (D. Nev. May 22, 2017) (granting COA on the question whether "federal carjacking qualifies as a crime of violence"); United States v. Baugus, No. 02-CR-113, 2017 WL 1316927, slip op. at *4 (D. Mont. Apr. 7, 2017)("Reasonable jurists could disagree on ... whether carjacking ... meets the force clasue of [§ 924(c)], and second, whether, the residual clause... is unconstitutionally vague under Johnson [II]."). These decisions acknowledge that the issues raised in the Appellant's 2255 petition are sufficiently debatable among reasonable jurist to warrant further exploration by the reviewing court.

F. THE QUESTING WHETHER SECTION 924(c)(3)(B)'s "RESIDUAL CLAUSE"IS VOID FOR VAGUENESS --- SATIFIES THE "SUBSTANTIAL SHOWING" STANDARD

[T]he Defendant likewise submits that reasonable jurist can - and do debate - the question whether Johnson II voids Section 924 (c)(3)(B)'s "residual" clause. Compare United States v. Douglas; No. 18-1129, 2018 WL 4941132, at *1 (1st Cir. Oct. 12, 2018). ("[W]e conclude that § 924(c)(3)(B) is not ... void for vague-

ness."); Ovalles v. United States; 905 F.3d 1231, 1252 (11th Cir. 2018) (en banc)(same), with United States v. Davis; 903 F.3d 484 (5th Cir. 2018) 139 S.Ct. 2319 (citing....0("[W]e hold that § 924 (c)'s residual clause is unconstitutionally vaugue."); also see: United States v. Eshetu; 898 F.3d 36, 38 (D.C. Cir. 2018)(vacating "section 924(c) conviction [] in light of [Sessions v.] Dimaya[138 S. Ct. 1204 (2018)]."); United States v. Salas; 889 F.3d 681, 686 (10th Cir. 2018), and United States v. Barrett; 903 F.3d 166, 184 (2nd Cir. 2018). ("Dimaya's reasoning for invalidating [18 U.S.C.] § 16(b) applies equally to § 924(c)(3)(B). Section 924(c)(3)(B) is likewise unconstitutionally vague."). See: United States v. Davis; 139 S. Ct. 2319 (2019); United States v. Rehaif; 139 S. Ct. 1470; and United States v. Ledbetter et al; No. 17-3299 & 17-3309 (2019) [W]hether crime of violence falls under subsection (A) or (B) of Section 924 (c)(3) is critical in determining whether a defendant is entitled to the releif under Davis (the Supreme Court said yes!).

[Al]though a panel of this Court recently found in Douglas that a fact-specific approach, rather than the categorical approach applies to Section 924(c)(3)(B), that holding appears to be in tension with the higher authority of Leocal v. Ashcroft; 543 U.S. 1 (2004). Indeed, the Supreme Court in Leocal held - unanimously - that the "language" of Section 924(c)(3)(B)'s identical twin "requires us to look to the elements and the nature of the offense of conviction rather than to the particular facts." Id. at 7. As that text has not changed, there is no basis to reject the texually mandated categorical approach. And, given that approach, Section 924(c)(3)(B) is void for vagueness.

The Douglas panel, however, applied the cannon of constitutional avoidance to sidestep the "problems of vagueness" that would purportedly arise if courts were to apply the given categorical approach. Douglas, 2018 WL 4941132, at *11. In so doing, the panel made no mention of the Supreme Court's contrary holding in Leocal. Furthermore, the Supreme Court has"reject[ed] a dynamic view of statutory interpretation, under which the text might mean one thing when enacted yet another if the prevailing view of the Constitution later changed." Clark v. Martinez; 543 U.S. 371, 382 (2005)(citation and internal quotattion marks omitted). Here, the text has not changed; rather a constitutional problem has emerged; "more unpredicatability and arbitrariness than the Due Process Clause tolerates." Johnson (II); 135 S. Ct. at 2558. While the Supreme Court had earlier rejected that challenge, in Johnson (II) " the prevailing view of the Constitution ... changed." Martinez; 543 U.S. at 382. And such a change, the Supreme Court has stated, does not allow for a "dynamic view of statutory interpretation." Id. The residual clause's language cannot "require us to look to the elements and the nature of the offense of conviction." (Leocal; 543 U.S. at 17), and then suddenly not. "That is not how the cannon of constitutional avoidance works." Jennings v. Rodriguez; 138 S. Ct. 830, 843 (2018). The cannon's aim is to avoid certain questions about newly enacted statutes, not "rewri[ting]" well-established laws to save them from rules adopted in subsequent jurisprudence. Id.

Additionally, in finding Section 924(c)(3)(B), does not require the categorical approach, the Douglas panel learned heavily

on the fact that Taylor v. United States; 495 U.S. 575 (1990), Johnson (II), and Dimaya involved "prior conviction[s]" whereas Section 924(c) concerns a "contemporaneous offense." 2018 WL 4941132, at *5 (emphasis omitted).

[Ye]t none of those cases turned on that Fact: all three cite the text as a (or the) key reason compelling the categorical approach. See Taylor; 495 U.S. at 600; Johnson (II); 135 S. Ct. at 2562; Dimaya, 138 S. Ct. at 1211; also see: Davis; 135 S. 2329; Rosales-Mareles; 138 S. Ct. 1908; Tatum v. Arizona; 137 S. Ct. 13; Ivy v. Morath; 196 L. Ed 2d. 284 (2016); Graham v. Fla.; 560 U.S. 48 (2010); Corley v. United States; 556 U.S. 303; (2009); Hamdan v. Rumsfield; 548 U.S 175; (2006); Shepard v. United States; 544 U.S. 13; (2005); Deck v. Missouri; 550 U.S 622 (2005); and see: Leocal v. Ashcroft; 271 U.S. 1 (citing "nature of the offense" and the residual clause' "by its nature" language).

[Ac]cordingly, under Mathis, they are not elements of discrete offenses, but distinct means of of carrying out a single element (the taking) Cf. United States v. Gardner; 832 F.3d 793, 802-03 (4th cir. 2016) (North Carolina robbery was a indivisible offense because the jury instructions did not re[-]quire a unanimous finding as to whether the defendant effected the taking by 'violence' or 'fear').

[Be]cause '[t]he dispute here does not concern any list of alternative elements,' the modified approach "has no role to play." United States v. Royal; 731 F.3d 333, 342 (4th Cir. 2015) (quoting Descamps; 133 S. Ct. at 2285). The Court must assume that Mr. Mangual-Corchado committed the least culpable (non-violent) conduct criminalized by the statute. See: Moncrieffe; 133 S.Ct at 1684. It makes no difference how slim the

possibility of violating the federal carjacking statute without the use of violent physical force is. Based on the mere fact that the possibility exist, we must assume carjacking is not a 'crime of violence.' See: United States v. Gomez-Hernandez; 680 F.3d 1171, 1178 (9th Cir. 2012) (finding that Arizona's aggrivated assault statute criminalized use of non-violent force without citing a single case which the offense was violated without violent force). Where, as here, the companion statute of conviction is indivisible and includes a non-violent means of committing the offense, the statute is categorically not a crime of violence within the meaning of Section 924(c).

REASONS FOR GRANTING THE PETITION

[F]or the foregoing reasons, this Court should find that Mr. Corchado's Section 924(c) convictions is no longer valid in light of Johnson I & II, Welch, Davis, Rehaif and Section 16(b). The Petitionerin positing a means to commit carjacking in a non-vilent fashion - a means that has not been squarely addressed by this Supreme Court - presents a debatable claim, even if " every jurist of reason might (a)-gree, after the COA (if it had been granted) and the case had received full consideration, that petitioner would not & therefore did not prevail." See: Miller-El; 537 U.S. at 338.

[Ac]cordingly, the petitioner respectfully asks that this Said Court issue Writ of Certiorari on the question of whether the offense of carjacking captures conduct falling outside the scope of Section 924(c), such that is does not define a 'crime of violence."

Respectfully submitted;

MR. SAUL MANGUAL-CORCHADO
U.S.M. NO.: 11072-069
FCC - USP TERRE HAUTE
POST OFFICE BOX - 0033
TERRE HAUTE, IN 47808

THIS 14th DAY of SEPT. 2020

C O N C L U S I O N

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED

RESPECTFULLY SUBMITTED
AND REQUESTED;

MR. SAUL MANGUAL CORCHADO
11072-069 UNIT D-1
FCC - USP TERRE HAUTE
P.O. BOX - 0033
TERRE HAUTE, INDIANA 47808

14 SPETMEBER 2020